IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

CRL.A.No. 1914 of 2004(C)

SC.829/2001 of ADDL. DISTRICT & SESSIONS COURT (ADHOC) I, KOLLAM

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APPELLANT: ACCUSED:

JOY, S/O. JOSEPH,
VILAYILVILAKAM VEEDU, PARICHERI, KODUVILA MURI,
EAST KALLADA VILLAGE, CHERRY, MUNDAKKAL VILLAGE,
KOLLAM TALUK.

BY ADV. SRI.C.RAJENDRAN

RESPONDENT: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
EAST KALLADA POLICE STATION (CRIME NO.128/2000)
THROUGH THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 8/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN CRL.M.A.NO.13626 OF 2004 IN CRL. APPEAL NO. 1914 OF 2004.

DISMISSED

8.8.2007 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO.1914 OF 2004

Dated this the 8th day of August, 2007

JUDGMENT

This appeal is filed against the judgment in S.C. No.829 of 2001 on the file of the Additional District and Sessions (Ad hoc) Court-I, Kollam. The appellant faced trial for the offences punishable under Sections 55(a) and (i) and 8(1) and (2) of the Abkari Act.

2. The prosecution case against the appellant - accused was that on 3.7.2000, 7.5 litres of arrack in a black cannas of 10 litres capacity was found on the eastern side of the thatched shed of the house of the appellant. It was the further case of the prosecution that the appellant was engaged in selling arrack in contravention to the provisions of the Abkari Act. To prove the case against the appellant, the prosecution examined PWs.1 to 4 and produced Exts.P1 to P5 as well as MOs.I to III. No oral or documentary evidence was adduced on the side of the defence. After closing the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. The accused denied the entire prosecution case and

stated that he was innocent. However, relying on the prosecution evidence, the trial court found the appellant - accused guilty under Section 8(1) read with Section 8(2) of the Abkari Act, convicted him thereunder and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of one year. The benefit of Section 428 Cr.P.C. was also allowed to the appellant. The above conviction and sentence are challenged in this appeal.

3. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel appearing for the appellant submits that the trial court committed serious error in finding the appellant guilty of the charges basing on the evidence of the prosecution witnesses, namely, PWs.2 and 3, the police officials who detected the offence. Counsel further submits that the provisions of the Abkari Act and the Kerala Excise Manual were violated while preparing Ext.P1 seizure mahazar as there is no independent evidence to support seizure of the contraband articles nor is there any evidence to show that the contraband articles and the residue were kept in safe custody till those were produced before the court. Lastly, counsel

contends that the punishment awarded is excessive.

5. The trial court mainly relied on the evidence of PWs.2 and 3. PW.3 was the then Sub Inspector of Police, East Kallada who had detected the offence and registered the case against the accused. He stated that when he and the other police officials reached the place of occurrence at 12 noon on 3.7.2000, the appellant was seen holding a black cannas and a glass tumbler and that on examining the cannas, it was found to contain 7.5 litres of arrack. This witness further stated that he seized the contraband articles as per Ext.P1 mahazar, took samples for analysis and arrested the accused. Ext.P5 is the chemical analysis report which shows that the samples contained 14.22% of ethyl alcohol by volume. He further stated that the accused, the contraband articles and the samples were produced before the court on 4.7.2000.

6. The evidence of PW.3 has been corroborated by the evidence of PW.2, one of the police constables who had accompanied PW.3 to the place of occurrence. He supported the version of PW.3 in all material particulars. PW.1 who was examined as an independent witness turned hostile to the prosecution. However, he admitted his signature in Ext.P1 mahazar. PW.4 was the Sub Inspector of Police who succeeded PW.3. He

stated that that he continued the investigation and laid the charge against the accused.

7. After considering the evidence of these witnesses, this Court is of the view that the trial court was fully justified in accepting the evidence of PWs.2 and 3 to find that the appellant was in possession of a 10 litre can containing 7.5 litres of arrack. Further, though PW.1 turned hostile to the prosecution, he had admitted his signature in Ext.P1 mahazar. A reading of Ext.P1 would show that PW.3 had prepared Ext.P1 in the presence of independent witnesses. It is also recorded in Ext.P1 that the appellant was questioned and MO.1 was seized. PW.3 had also stated that he had recovered from the appellant currency notes worth Rs.110/-. In the above circumstances, the contention of the learned counsel appearing for the appellant that PW.3 had not complied with the provisions of the Abkari Act or the Kerala Excise Manual is not sustainable. However, the prosecution could not prove that the appellant had sold arrack to anybody. After considering the entire evidence, the trial court found that the appellant committed offence punishable under Section 8(1) read with Section 8(2) of the Abkari Act. As the appellant was found in possession of 7.5 litres of arrack in contravention to the provisions of the Abkari Act and the rules framed thereunder, this Court is of the view that the

conviction entered by the trial court requires no interference.

8. The next question to be considered is regarding the sentence awarded by the trial court. It has come out in evidence that the appellant was convicted for a similar offence by the trial court in S.C. No.570 of 1999. However, considering the fact that the incident happened in the year 2000 and the prosecution could not prove sale of arrack, this Court is of the view that the sentence of imprisonment awarded by the trial court can be reduced. Accordingly, the appellant is sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of six months. The benefit of Section 428 Cr.P.C. is also allowed to the appellant.

The Crl. Appeal is dismissed subject to the above modification in the sentence.

(K.THANKAPPAN, JUDGE)

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